

STATE OF CALIFORNIA  
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING  
JUDGE BRUCE VAN VOORHIS,  
  
NO. 165.

NOTICE OF  
FORMAL PROCEEDINGS

To Bruce Van Voorhis, a judge of the Contra Costa County Municipal Court from January 5, 1987, to June 7, 1998, and a judge of the Contra Costa County Unified Superior Court from June 8, 1998, to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

## **COUNT ONE**

In the case of *People v. Karl Elze*, No. 01-112062-5, you made, or gave the appearance of making, a legal ruling for a purpose other than the faithful discharge of your judicial duties, in violation of the Code of Judicial Ethics, canons 1, 2A, 3B(2) and 3B(8). On January 30, 2001, you granted a defense objection to the admissibility of statements of the defendant made prior to the administration of field sobriety tests. In early February 2001, shortly after the trial, you stated to Deputy District Attorney Stacey Brock to the effect that she had been legally entitled to introduce the evidence of such statements, but that you had suppressed the evidence in order to see how she would handle it. At the time, Ms. Brock had been an attorney for less than three months.

## **COUNT TWO**

As set forth below, you have engaged in a pattern of failing to be patient, dignified and courteous to attorneys, court staff, and jurors when dealing with them in your official capacity. You have done so despite being publicly reprovved by the Commission on Judicial Performance on September 8, 1992, for (among other misconduct) failing to be patient, dignified, and courteous to attorneys, court staff, and jurors. The public reproof was issued with your consent and after you had assured the commission that such conduct would not be repeated.

- A. You have engaged in harsh and gratuitous interrogation and criticism of attorneys appearing before you, giving the appearance of a lack of impartiality, and interfering with the ability of the attorneys to effectively represent their clients, in violation of the Code of Judicial Ethics, canons 1, 2A and 3B(4), as follows:

1. On June 1, 1999, you presided over the trial in *People v. Karen Silva*, No. 982049-9. During the cross-examination of prosecution witness Gary Gifford, you repeatedly responded to the prosecutor's objections by criticizing the manner in which defense attorney William Gardner posed questions to the witness. You then interjected a lengthy series of questions and comments about Mr. Gardner's cross-examination that disparaged Mr. Gardner's professional competence, including, "That's not the way to prove a case in criminal court. Didn't you learn that in law school?" and "Now you need to ask him the question that you learned in law school is a legitimate question." Your questions and comments were made on the record in open court. You declined a request from the prosecutor to address these matters outside the presence of the jury.
2. On August 12, 1999, during trial in *People v. Jason William Gotchall*, No. 187707-5, you criticized Deputy District Attorney Kathleen McMurray for eliciting testimony from the arresting officer about the defendant's performance on a gaze nystagmus test without having presented expert witness testimony as to the scientific validity of the test. After determining that Ms. McMurray was not aware expert testimony would be required and was not prepared to present an expert witness, you ruled that the officer's testimony concerning gaze nystagmus was inadmissible. Subsequent to your ruling, you refused Ms. McMurray's request to discuss the matter at bench, stating, "And what would you tell me up here?" You repeatedly admonished Ms. McMurray for initiating questions about the gaze nystagmus test without being prepared to present expert testimony. You repeatedly stated your concerns about the effect on

the jury of having heard reference to the administration of the test without scientific evidence linking the test to proof of intoxication, and about the jury's ability to follow instructions to disregard the testimony. You offered Ms. McMurray the choice of attempting to qualify the officer as an expert, but warned her that if the officer did not qualify — which you stated she probably would not — Ms. McMurray would have “wasted a lot of time, and I may have to take the jury away from you....” When Ms. McMurray elected to forego the testimony, you disparaged her performance as an attorney by telling the jury: “The prosecutor has told you and me that she has no intention of showing that it has any more scientific basis than the little joke I made about the little finger, so we'll leave that topic.” All of your remarks were made on the record in open court.

3. In January 2000, you presided over the case of *People v. Ward Hoyer*, No. 117462-2. Hoyer was represented by Deputy Public Defender Esteban Alvear, who was born in Ecuador and had lived in the United States for approximately 12 years. On January 26, 2000, following the imposition of sentence, you told Mr. Alvear that while it was “charming,” he might want to “lose that accent” because there might be times he would not be able to get things across to a jury because of it. Your unsolicited comments were made from the bench, in open court, in the presence and hearing of Mr. Alvear's client, opposing counsel, and members of the audience. Your comments violated the Code of Judicial Ethics, canon 3B(5), as well as canon 3B(4).

Your remarks to Mr. Alvear formed part of a basis for a motion to disqualify you for bias, which was filed in a case handled

by a different attorney. Superior Court Judge Joan Cartwright, although denying the motion, concluded that “it was inappropriate for [you] to suggest to Deputy Public Defender Esteban Alvear that he do something about his accent...” (*People v. Charles Joseph Nelson*, Nos. 110647-5 and 111563-3, May 17, 2000, decision denying challenge for cause.)

4. In March 2000, you presided over the case of *People v. Fred Brian McDonald*, No. 109182-6. The People were represented by Deputy District Attorney Christine Meade, who had been an attorney for approximately three months. On March 7, 2000, you interrupted Ms. Meade’s questioning of the defendant about his probationary status by stating: “I want to know where you learned in law school, or the District Attorney’s Office, that his probationary status is admissible in a court of law.” When Ms. Meade apologized and said that she did not learn that, you replied: “Yeah. And so were you just guessing what you could get away with in a courtroom?” You then questioned Ms. Meade about her basis for asking the question and questioned her motives in asking the question. When Ms. Meade said that she had not known that it was improper to question the defendant about his probationary status, you replied: “So when I asked at the beginning of this trial how you were going to prove [the defendant’s prior conviction], you thought I was just making conversation?” After you instructed the jury that probation had nothing to do with the case and denied a motion for a mistrial, you told Ms. Meade, “You need to be way more careful in my courtroom than you just were ... or you could be in a lot of trouble[.]” and directed her to “Abide by my rulings, or you’ll tangle with me.”

Your comments were made on the record in open court.

5. In January and February 2001, you presided over the trial of *People v. Karl Elze*, No. 01-112062-5. During the trial, Deputy District Attorney Stacey Brock attempted to introduce evidence regarding the defendant's ability to follow directions when given a horizontal gaze nystagmus test by the testifying police officer. After you determined that the evidence would not be admitted, you demeaned Ms. Brock by directing her to tell the jury "it doesn't mean anything," before instructing the jury yourself. When Ms. Brock told the jury "This doesn't mean anything[,]," you replied: "Yeah. So why bother with it?"
  6. Also during the *Elze* trial, Ms. Brock objected on the ground of relevance to a defense question about whether the defendant drank less or more when he went out as opposed to when he was at home. You ruled that the evidence was admissible as character evidence to prove that the defendant had a pattern of behavior and had acted consistently with that behavior. You then told Ms. Brock, in a demeaning tone, to state that the evidence was relevant. Ms. Brock complied. This took place in open court and in the presence of the jury.
- B. You have criticized court staff in a harsh and disparaging manner and failed to cooperate in the administration of court business, in violation of the Code of Judicial Ethics, canons 1, 2A, 3B(4) and 3C(1), as follows:

1. On July 13, 1999, you were temporarily assisted by clerk Kim Carmichael. In the morning, you repeatedly demanded that Ms. Carmichael provide you with files which were still being prepared by other employees in the clerk's office. You waved your finger and admonished Ms. Carmichael in a very loud voice, "I want those files, now," became visibly angry with Ms. Carmichael when the clerk's office failed to transmit all of the files you had requested, and demanded that Ms. Carmichael find out what had happened to the other files.

During the afternoon session, you angrily threw a group of court files onto Ms. Carmichael's desk or a table near where she was seated. You demanded to know where the defendants were and whether Ms. Carmichael had changed the calendars in the hallway. When Ms. Carmichael responded that she had not changed the calendars and offered to check, you angrily told her "No, just go get them," referring to defendants in an adjacent courtroom. Ms. Carmichael reported your treatment of her to her supervisor and was reassigned.

On August 4, 1999, and prior to the two incidents next alleged, you met with Presiding Judge Mark B. Simons to discuss your conduct toward Ms. Carmichael and other court staff. At that meeting and by letter of August 5, 1999, Judge Simons advised you that such conduct must not be repeated.

2. On April 19, 2000, you were temporarily assisted by courtroom clerk Pat Van Horn while you presided over the case of *People v. William Homeyer*, No. 01-110873-7. After closing instructions to the jury,

Ms. Van Horn, orally and on the record, administered the oath to the bailiff to take charge of the jurors. After you excused the jury for deliberations, you turned to Ms. Van Horn and criticized her for wasting 20 seconds of your time by swearing in the bailiff on the record. You then expressed your desire to dispose of cases in a timely manner, stated your opinion that it is unnecessary to swear in the bailiff on the record, and instructed Ms. Van Horn to swear in the bailiff quietly without placing the oath on the record. Your remarks were addressed to Ms. Van Horn from the bench in open court. You were visibly angry when you spoke to Ms. Van Horn.

Ms. Van Horn filed a written complaint with the court regarding your conduct toward her. A copy of Ms. Van Horn's complaint was provided to you by the presiding judge before the incident next alleged.

3. On December 26, 2000, Deputy Sheriff Genoa Brown, who was assisting temporarily in the Walnut Creek courthouse, informed Deputy Public Defender Eric Quandt that an inmate had not been transported to court because, according to the sheriff's clerical staff at the Martinez Detention Facility, the inmate's case had been vacated. Mr. Quandt told Deputy Brown there was a mistake and the inmate needed to be in court. You then chastised Deputy Brown, stating in an angry and belittling tone, words to the effect of "You need to learn how to do your job. You need to know how to do your job in my courtroom. Steve is going to show you how to do your job in my courtroom so I don't blow my top in the middle of open court. Aren't you, Steve? You are going to show her how to do her job. I have a file and I don't have a body!" ("Steve" was Deputy Sheriff



Steve LaFortune, your courtroom bailiff.)

Your remarks were addressed to Deputy Brown in open court. Deputy Brown reported your conduct to her supervisor. A formal written complaint was filed by the Sheriff's Department with the court alleging a violation of the Contra Costa County Hostile Work Environment Policy and the Sheriff's Office Harassment in Employment Policy.

- C. You publicly criticized jurors in your courtroom in violation of the Code of Judicial Ethics, canons 1, 2A and 3B(4), as follows:

On August 18, 2000, during proceedings in *People v. Jonathan Sowande*, No. 01-192547-8, you disparaged the form of a written request for clarification submitted on behalf of the jury by the jury foreperson. You recalled the jury from its deliberations for the purpose of making an oral response to its written question. You stated to the jurors that although it was your normal policy to correspond with jurors in writing, you had decided to answer their question orally "because I want you to look at the question you gave me. And you'll see that you could improve on your English, and therefore your question could be way more precise for me." You further admonished the jury that "one of the things you can help me to do is to make your questions to me as precise as possible, which means look them over several times, because an English teacher would object to the wording of that question. But I'll read it to you and then you'll see my answer." Your remarks were made on the record in open court. As a consequence of your remarks, two jurors wrote letters of complaint to you, and sent copies of the complaints to the presiding judge.

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal, contained in the California Rules of Court. The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: 12/11/01

/s/  
MICHAEL A. KAHN  
CHAIRPERSON